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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re MARILYN H., A Person  
Coming Under the Juvenile  
Court Law.

B302057

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Los Angeles County  
Super. Ct. No.  
19CCJP02633A

Plaintiff and Respondent,

v.

KARINA H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Sabina A. Helton, Judge. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant  
County Counsel, and William D. Thetford, Deputy County  
Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Karina H. (mother) appeals from the juvenile court's jurisdiction findings and disposition order declaring her daughter Marilyn a dependent of the court and removing the child from mother's custody. Mother argues insufficient evidence supports the court's jurisdiction findings that her mental health issues place Marilyn at risk of serious physical harm and that mother failed to protect the child from her father's drug use. Mother also contends that the court erred in denying her request to continue the disposition hearing and by removing Marilyn from her custody. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. The Family's History**

Mother has four children, three of whom are still living. Mother's second oldest child, Jasmine, died of a drug overdose in February 2019, at the age of 17. Jasmine was removed from mother's custody and became a dependent of the court around 2005, after she was bitten by the family's dog. Mother never reunified with Jasmine. At the time of her death, Jasmine was living with her maternal great aunt. Mother also lost custody of her oldest child, Daniel, after the same dog bit him several months after biting Jasmine. Mother never reunified with Daniel and her parental rights were terminated in 2012.

Mother's third oldest child, Genevieve, was placed in protective custody in 2012, when the child was an infant. Genevieve was removed from mother's custody due to mother's "history of chronic drug use" and her failure to take prescribed medication for "depression and post-partum depression." Mother never reunified with Genevieve. In late 2012, the court granted

sole legal and physical custody of Genevieve to the child's father, who lives in Wyoming, and issued a restraining order protecting Genevieve and her father from mother.

Marilyn was born in 2017. Her father is John M. (father), whom mother and Marilyn lived with in Las Vegas for several months before returning to California after Jasmine's death.<sup>1</sup> Father was incarcerated for drug-related charges in February 2019 and expected to be released from custody in October or November 2019.

## **2. The Parents' Conduct Leading to the Underlying Proceedings**

### **2.1. Mother's Mental Health Issues**

Mother and Marilyn came to the attention of the Department of Children and Family Services (Department) in March 2019, after it received a referral from Tri-City Mental Health Services (Tri-City). At the time, mother and Marilyn were homeless and living with "family members."

A representative from Tri-City reported that mother was diagnosed with major depressive disorder and receiving mental health services through the agency since February 2019. Mother called the agency in late March 2019 because "she needed a ride to the cemetery and a ride to look for housing." During the call, mother sounded "distress[ed]" and in a "heightened state," and Marilyn could be heard crying in the background. Mother yelled

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<sup>1</sup> Although mother denied John is Marilyn's father, a DNA test proved he is the child's biological father, and the court later declared him Marilyn's presumed father.

at Marilyn to “ ‘stop it, shut up, don’t do that,’ ” but the representative didn’t hear mother threaten the child.

Mother’s therapist at Tri-City reported that mother was diagnosed with “major depression reoccurrent with psychotic symptoms.” Although mother could stay on topic and appear “to comprehend what was going on” during in-person visits with the therapist, she “did not make sense” and “went off topic frequently” when they spoke on the telephone. The therapist wasn’t sure if mother “has mental health concerns or if she is using substances.” The therapist was “concerned for [Marilyn] when mother is in the community with the child by herself.”

The therapist visited the home where mother was staying. Mother’s family was helping her care for Marilyn and “everything seem[ed] well.”

In late March 2019, mother met with a worker at the Department of Public Social Services (DPSS). Mother “ ‘did not seem like she was all the way there,’ ” and she kept referring to Marilyn as “Jasmine.” Mother and Marilyn were dirty and their hygiene “looked neglected.”

The DPSS worker reported that throughout the meeting, mother was “very aggressive” and “taunting, threatening and placing the blame on [Marilyn].” When Marilyn began touching items on the worker’s desk, mother yelled at her, “ ‘you son of a bitch, stop touching things, you’re making me look like I am irresponsible, you better be glad we are here.’ ” (Italics omitted.) According to the worker, Marilyn didn’t “flinch or say a word” after mother yelled at her. A client who saw mother and Marilyn in the waiting room reported that mother was “aggressive and using profanity towards the child.”

The day after mother went to the DPSS office, one of the Department's social workers visited the home address mother provided Tri-City. Mother wasn't home, but Marilyn was being watched by mother's 19-year-old cousin and Daniel's grandmother. The home was neatly-furnished and well-stocked with food, and Marilyn was clean and well-groomed. Mother was only living at the home temporarily, as Daniel's grandmother wanted mother to become "more self-sufficient."

The social worker interviewed mother in early April 2019. Mother was struggling to cope with Jasmine's death, which was made more difficult because her own mother died less than a year earlier. Mother denied having a mental health diagnosis, but she acknowledged she was placed on an involuntary hold and prescribed Seroquel in mid-February 2019. Mother ran out of the medication and was trying to obtain a new prescription through Tri-City. She claimed she's compliant with her medications when she has them. Mother denied cursing at Marilyn while at the DPSS office, claiming she often curses in front of, but never at, the child. Mother was enrolled in parenting classes, which she attended twice a week, and she was participating in a support group.

Mother recently obtained a job at McDonalds. She planned to have her 19-year-old cousin help watch Marilyn while she worked. Mother also planned to live with her ex-mother-in-law until she found her own housing.

In mid-April 2019, mother brought Marilyn to an appointment with mother's therapist at Tri-City. Staff reported that Marilyn's clothes were wet and the child had a diaper rash. Mother was "aggressive and irritable" during the office visit, and mother told the staff she hadn't taken any medication.

A few days after mother's appointment at Tri-City, a case worker at East Valley Community Health reported that Marilyn had six or seven rashes on her inner legs, each the size of a nickel or a dime, that mother could not explain. Although mother claimed the rashes appeared the previous weekend, the case worker believed the rashes were older. The case worker was concerned about Marilyn's "hygiene and neglect as mother did not appear stable." Marilyn's diaper was "over saturated" and looked like mother hadn't changed it "in a long time." Marilyn's stroller, clothes, body, and the bottom of her feet were "very dirty."

When the case worker stepped out of the room, she heard mother start yelling at Marilyn, causing the child to cry. The case worker didn't observe any marks on Marilyn when she returned to the room, but mother smelled like alcohol and was engaging in "very tangential" behavior.

In late April 2019, the social worker interviewed Marilyn's maternal great aunt. The great aunt reported that "all the family sees mother mistreat Marilyn." The great aunt believed mother needed to "be in a 50/50 hospital" and could not take care of Marilyn. The great aunt was not ready to take custody of Marilyn because she was still grieving Jasmine's death.

## **2.2. Drug Issues**

Father admitted he has a history of using marijuana and methamphetamine. He told the Department he was arrested in February 2019 for "selling 'meth.'" Father had yet to enroll in a drug-related program while incarcerated. Father intended to "look for" Marilyn once he's released and seek custody of the child if she isn't in "good hands with mother."

Mother acknowledged that father has a history of drug use, but she didn't know what types of drugs he typically used. Mother told the Department that father was never in the house when she lived with him in Las Vegas, claiming he would leave for days at a time. Mother never saw any drugs or paraphernalia in the house, and she claimed father was never under the influence at home or around Marilyn.

After the Department began investigating the family, mother denied she has a substance abuse problem. Mother agreed to submit to drug tests but missed one test and could not provide a sufficient urine sample for another test.

### **3. The Dependency Petition and the Detention Hearing**

On April 25, 2019, the Department filed a dependency petition on Marilyn's behalf. The Department alleged: (1) mother's mental health and emotional problems, including a diagnosis for "major depression recurrent with psychotic symptoms," and her failure to take prescribed psychotropic medication, places Marilyn at risk of serious physical harm (Welf. & Inst. Code,<sup>2</sup> § 300, subd. (b); b-1 allegation); (2) father's history of substance abuse renders him incapable of providing regular care to Marilyn, and his drug use and mother's failure to protect Marilyn from that drug use place the child at serious risk of physical harm (§ 300, subd. (b); b-2 allegation); and (3) mother's mental health issues, which caused Marilyn's sibling, Genevieve, to be declared a dependent of the court, place Marilyn at serious risk of physical harm (§ 300, subd. (j); j-1 allegation).

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<sup>2</sup> All undesignated statutory references are to the Welfare and Institutions Code.

At the detention hearing, the court found the petition alleged a prima facie case under section 300, subdivisions (b) and (j). The court ordered Marilyn detained from her parents' custody and awarded mother monitored visits.<sup>3</sup>

#### **4. Jurisdiction and Disposition**

The Department interviewed mother and father in April and May 2019. Mother was still working at McDonalds, and she recently obtained a second job at Del Taco. She was consistently visiting with Marilyn multiple times a week.

Mother initially denied having any mental health history or ever taking any medication for mental health issues. She later acknowledged, however, that she was diagnosed with post-partum depression and took psychotropic medication, but she denied being hospitalized for a "psychiatric" condition. She first told the social worker that she took medication for a "few months," but later claimed she took it for only 30 days per her doctor's orders. Mother was no longer taking medication, and she was scared to start taking it again because of Jasmine's overdose.

Father last spoke to mother before he was arrested in February 2019. Mother's mental health was "good" when they were together. Mother and father always had "good conversation," and mother never acted "different or strange around him."

Mother began drug testing in late April 2019. Between April 26 and May 7, mother submitted three clean drug tests and failed to show up for one test. In late June 2019, mother started

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<sup>3</sup> Shortly after the detention hearing, mother filed a petition for modification asking the court to return Marilyn to her custody (§ 388). The court summarily denied mother's petition.



testing on about a weekly basis. Between the first test and the last test in mid-October 2019, mother tested positive for marijuana 13 times, and she failed to show up for three drug tests. Mother told the Department she drinks “marijuana tea” with a friend to relax.

In late August 2019, one of the Department’s social workers met with mother. Mother was living in a shelter in Pomona and still visiting Marilyn on a regular basis. During the meeting, mother was “very emotional and angry at times.”

Mother was taking psychotropic medication and participating in mental health treatment at Tri-City every other week. Mother met with her psychiatrist every month for her medication, which included “Seroquel” and other medication the name of which she couldn’t recall. Mother completed a parenting program in July 2019 and subsequently enrolled in a new program because she hoped to “regain custody of [Marilyn] quicker.” Mother also was participating in individual therapy, which she started attending in April 2019.

In September 2019, Tri-City submitted a letter confirming that mother was diagnosed with a condition “that would meet medical necessity to receive specialty mental health services.” Mother had already attended 25 sessions with her treatment team. Mother also completed two sessions with Tri-City psychiatric staff.

In early October 2019, Tri-City confirmed that mother completed a psychiatric evaluation and was taking her prescribed medication. Mother last saw a psychiatrist on October 2, 2019, and she was following through with her treatment team’s recommendations.

Around mid-October 2019, mother smeared feces on the bathroom wall of the Department's office while she waited for Marilyn to arrive for a monitored visit.

As of late October 2019, mother was still participating in mental health services at Tri-City, including attending individual therapy, meeting a clinical advocate, receiving psychiatric services, and taking psychotropic medication. Mother left the shelter where she was living in August 2019 to stay with a friend in Pomona, and she continued to visit Marilyn on a regular basis. According to the social worker who interviewed her, mother did not appear "stable or coherent to provide regular care to the child."

On October 25, 2019, the court held the jurisdiction and disposition hearing. No witnesses testified. The court admitted the Department's reports and several exhibits introduced by mother, and it took judicial notice of the petitions, disposition case plans, and minute orders from a prior dependency case with "case number CK63376."<sup>4</sup>

The court sustained the petition as pled. The court found mother's mental health issues place Marilyn at risk of serious physical harm, noting that "there is nothing in front of me today that would indicate that mother is completely stable ... other than her attorney telling me that. [¶] Even the exhibits submitted by mother do not indicate, in and of themselves, that treatment is complete or there is total compliance or anything." Although the court commended mother on maintaining two jobs

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<sup>4</sup> It is unclear which prior dependency case the court was referring to because mother has not included in the record on appeal any of the documents the court judicially noticed.

and following through with mental health services and parenting programs, it found there was nothing in the record to show mother was prepared “to take what is a very, very young child.” The court then declared Marilyn a dependent of the court, ordered her removed from her parents’ custody, and awarded mother and father reunification services.

Mother appeals.<sup>5</sup>

## DISCUSSION<sup>6</sup>

### 1. The Jurisdiction Findings

#### 1.1. Applicable Law and Standard of Review

“Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child if the ‘child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or

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<sup>5</sup> Father also appealed from the disposition order, but his court-appointed appellate counsel filed a no-merit brief under *In re Phoenix H.* (2009) 47 Cal.4th 835. We dismissed father’s appeal in August 2020.

<sup>6</sup> We deny mother’s request for judicial notice of parts of the appellate record in Los Angeles Superior Court Case No. 18CCJP03199A, an unrelated dependency case involving different issues and different parties from those involved in this appeal. We therefore disregard mother’s references in her opening brief to the exhibits attached to her request for judicial notice.

We grant the Department’s request to strike from the appellate record in this case the exhibits attached to mother’s request for judicial notice because they include identifying information concerning the parties in a separate dependency proceeding. (See Cal. Rules of Court, rule 8.401(b)(1).)

inability of his or her parent ... to adequately supervise or protect the child.’ ” (*In re E.E.* (2020) 49 Cal.App.5th 195, 205 (*E.E.*), italics omitted.) A court may also exercise jurisdiction over a child under section 300, subdivision (j), where the child’s sibling has been “abused or neglected” as defined under one of the other subdivisions of section 300, if there is “a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (§ 300, subd. (j).)

“The juvenile court need not wait until a child is seriously injured to assume jurisdiction if there is evidence that the child is at risk of future harm from the parent’s negligent conduct. [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 (*Yolanda L.*)). The court may consider past events as an indicator of whether the child faces a current risk of harm because “[a] parent’s past conduct is a good predictor of future behavior.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*)).

We review a juvenile court’s jurisdiction finding for substantial evidence. (*E.E.*, *supra*, 49 Cal.App.5th at p. 206.) We will affirm the finding if it is supported by evidence that is reasonable, credible, and of solid value. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) We review the record in the light most favorable to the court’s findings and draw all reasonable inferences from the evidence in favor of those findings. (*In re R.T.* (2017) 3 Cal.5th 622, 633.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*R.V.*, at p. 843.)

## **1.2. Mother has not shown the court erred in exercising jurisdiction over Marilyn.**

Mother’s mental health issues form the basis for two of the petition’s allegations that the court sustained—the b-1 and the j-

1 allegations. A jurisdiction finding under section 300, subdivision (j) does not require the same proof as a finding under section 300, subdivision (b). As the California Supreme Court explained, “ [t]he broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 774 (*I.J.*).

Here, mother addresses only the b-1 allegation, arguing insufficient evidence supports the court’s finding that her mental health issues place Marilyn at risk of serious physical harm. Mother fails to argue, however, why the court erred in exercising jurisdiction over Marilyn under section 300, subdivision (j). Indeed, mother doesn’t discuss section 300, subdivision (j), at any length in her argument in her opening brief. Nor does mother try to explain in her opening brief why a lack of evidence to support the jurisdiction finding under subdivision (b) necessarily renders the finding under subdivision (j) invalid.

This omission is critical to mother’s challenge to the jurisdiction findings. Even if mother could show the court erred in exercising jurisdiction under subdivision (b), she has not shown why it was improper for the court to exercise jurisdiction under subdivision (j). For instance, mother has not addressed the relationship between the circumstances that caused Genevieve, Marilyn’s sibling, to become a dependent of the court to the

circumstances that brought Marilyn to the court's attention. (See *I.J.*, *supra*, 56 Cal.4th at p. 774 [before sustaining an allegation under subdivision (j), the court must consider the circumstances of the sibling who was previously declared a dependent in determining whether the minor currently before the court faces a serious risk of harm].) As a result, mother has not met her burden, as the appellant, to demonstrate the court erred in exercising jurisdiction over Marilyn. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [the court's judgment is presumed correct, and it is the appellant's burden to affirmatively show reversible error].) Because a single valid jurisdiction finding is sufficient to maintain jurisdiction over a minor, we would affirm the court's decision to exercise jurisdiction over Marilyn for this reason alone. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*) [a single jurisdiction finding against one parent is sufficient to maintain dependency jurisdiction over a child].)

But mother's challenge to the court's jurisdiction findings is critically flawed for an additional reason. As we noted in our summary of the jurisdiction hearing, the court took judicial notice of parts of the record from a prior dependency case. Mother has not, however, provided us with copies of those documents, nor does she explain the nature of the documents, let alone acknowledge that the court took judicial notice of them. Presumably, those documents were from Genevieve's prior dependency case because the jurisdiction findings in that case formed the basis for the j-1 allegation in this case. (See *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435 [we presume portions of the lower court record that the appellant has omitted from the appellate record support the trial court's decision].) Indeed, mother doesn't argue the Department failed to prove Genevieve

was previously declared a dependent of the court because of mother's mental health issues.

Without the documents that the court judicially noticed, we lack an adequate appellate record to evaluate whether the court erred in finding Marilyn fell within the scope of section 300, subdivision (j). For instance, those records may show that the issues leading to Genevieve's dependency are the same as the ones that resulted in Marilyn coming to the court's attention. If that's the case, the court reasonably could have found that mother's progress in parenting classes and in addressing her mental health issues did not alleviate the same risks that placed Genevieve at risk of harm from creating a risk of serious harm for Marilyn. (See *I.J.*, *supra*, 56 Cal.4th at p. 774.)

In any event, substantial evidence supports the court's finding that mother's mental health issues placed Marilyn at risk of serious harm for purposes of section 300, subdivisions (b) and (j), at the time of the jurisdiction hearing. After Marilyn came to the Department's attention, officials from Tri-City, East Valley Community Health, and DPSS expressed concern about mother's ability to appropriately care for the child on her own. Those concerns arose out of mother's threatening and aggressive behavior toward Marilyn and the child's poor hygiene, all of which were connected to mother's mental health issues.

For instance, officials from each organization witnessed mother speak and act aggressively toward Marilyn on numerous occasions. A DPSS client also reported that mother was "aggressive and using profanity towards the child" while in the agency's waiting room, and the child's maternal great aunt told the Department that mother often "mistreats" Marilyn in front of the family. As for Marilyn's poor hygiene, the case worker from

East Valley Community Health reported that during one of mother's visits, Marilyn's diapers were soiled and looked like they hadn't been changed for a long time, and the child had significant rashes on her legs that mother couldn't explain. The case worker was concerned about Marilyn's neglect and poor hygiene because mother "did not appear stable."

To be sure, mother demonstrated a serious commitment to addressing her mental health and parenting issues before the jurisdiction hearing. Mother completed a parenting program and voluntarily enrolled in a second one, and she consistently participated in mental health services, including taking prescribed medication and meeting with a psychiatrist, for about two months. But the court reasonably could have found mother had yet to make sufficient progress addressing her mental health issues to eliminate any risk of serious harm to Marilyn. For example, in late August 2019, the Department noted that mother continued to engage in aggressive behavior. And, only a couple of weeks before the jurisdiction and disposition hearing, mother acted in a bizarre manner at one of the Department's offices when she smeared feces on the bathroom wall.

Aside from arguing insufficient evidence supports the court's finding sustaining the b-1 allegation, mother also contends the court improperly placed the burden of proof on her to show her conduct did not place Marilyn at risk of serious harm. (See *In re D.C.* (2011) 195 Cal.App.4th 1010, 1014 [as the petitioning party, "[t]he Department has the burden to prove the jurisdictional facts by a preponderance of the evidence"].) Specifically, mother points to the fact that, when explaining why it sustained Marilyn's petition, the court did not refer to any of the Department's evidence and made the following statement:



“[T]here is nothing in front of me today that would indicate that mother is completely stable, I mean other than her attorney telling me that. [¶] Even the exhibits submitted by mother do not indicate ... that treatment is complete or there is total compliance or anything. [¶] ... [¶] I just don’t have anything in front of me from a treater saying that you’re ready to take what is a very, very young child.” The record does not support mother’s argument.

The court never stated that mother, and not the Department, carried the burden of proving whether Marilyn faced a serious risk of harm as a result of mother’s conduct. And, although the court commented that mother didn’t present any evidence to show her mental health issues had stabilized since the Department filed Marilyn’s petition, that doesn’t mean the court shifted the initial burden of proof. As we explained above, the Department presented substantial evidence to show mother’s mental health issues placed Marilyn at serious risk of harm. Thus, the challenged statements reflect the court’s weighing of the evidence before it sustained the petition. That is, the court’s statements show that once the court found the Department met its initial burden to prove by a preponderance of the evidence that mother’s conduct placed Marilyn at risk of serious harm, mother did not sufficiently rebut that showing.

We also reject mother’s argument that the court improperly relied on evidence of her drug use and housing instability to sustain the jurisdiction findings. Mother is correct that the court can’t sustain jurisdiction on grounds not pled in the petition, like mother’s drug use and housing issues. (See *In re Andrew S.* (2016) 2 Cal.App.5th 536, 544 [juvenile court could not sustain

jurisdiction on grounds not pled in the dependency petition].) But nothing in the record indicates the court did that in this case.

Mother points to the Department's last-minute report filed shortly before the jurisdiction hearing, in which the Department noted that mother was no longer living at a shelter and had used marijuana after Marilyn's petition was filed. Mother insists those statements show the court relied on mother's lack of stable housing and marijuana use to sustain the petition. But those statements only appeared in the Department's report, and nothing in the record, including the court's explanation for why it sustained the petition, suggests the court exercised jurisdiction over Marilyn based on mother's drug use or lack of stable housing. For instance, when the court found mother did not appear sufficiently stable when it sustained the b-1 and j-1 allegations, the court was referring to mother's mental health issues, as it explained there was nothing to show her treatment had resolved those issues by the time of the jurisdiction hearing.

In short, mother has not shown the court erred in sustaining the b-1 and j-1 allegations in Marilyn's petition. For that reason, we need not address mother's challenge to the sufficiency of the evidence to support the court's finding sustaining the b-2 allegation based on father's drug use. (*M.W.*, *supra*, 238 Cal.App.4th at p. 1452.)

**2. The court did not abuse its discretion when it denied mother's request to continue the disposition hearing.**

Mother next contends the court erred when it denied her request to continue the disposition hearing. Mother asked for a continuance after the court sustained Marilyn's petition because she wanted additional time to prove she acquired housing and to present testimony from her therapist addressing her current

mental health condition. The court denied mother's request because the most recent evidence addressing mother's mental health was from only a couple of weeks before the jurisdiction and disposition hearing and, therefore, was indicative of mother's "current" status.

Although continuances are discouraged in dependency proceedings (*In re Mary B.* (2013) 218 Cal.App.4th 1474, 1481), the juvenile court may grant a continuance if it would "not [be] contrary to the best interest of the child." (§ 352, subd. (a)(1).) A continuance "shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (*Id.*, subd. (a)(2).) The party seeking a continuance must provide "written notice ... at least two days prior to the date set for the hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance." (*Id.*, subd. (a)(3).) We review a court's denial of a request for a continuance for abuse of discretion. (*Mary B.*, at p. 1481.)

The court did not abuse its discretion in denying mother's request to continue the disposition hearing. As a preliminary matter, we note mother didn't satisfy the procedural requirements for obtaining a continuance. She never provided advanced written notice of her intent to seek a continuance of the disposition hearing, nor did she provide any affidavits or declarations explaining why a continuance was necessary. (§ 352, subd. (a)(3).)

Mother also made no effort to show why there was good cause to grant or to entertain an oral motion for a continuance. (§

352, subd. (a)(2)–(3).) Mother was aware that the disposition hearing was scheduled for the same day as the jurisdiction hearing. Mother also should have been aware that issues concerning her mental health and housing status would be relevant to the court’s decisions at the disposition hearing. For instance, mother’s mental health status was one of the primary issues raised in Marilyn’s dependency petition, and mother’s housing status obviously would have been relevant to the court determining whether it would be safe to return Marilyn to mother’s custody. Mother did not show why she couldn’t present testimony from her therapist addressing her mental health status or produce evidence concerning her housing status at the scheduled disposition hearing. The court, therefore, properly denied mother’s request to continue the disposition hearing.

**3. Substantial evidence supports the court’s order removing Marilyn from mother’s custody.**

Once the court finds a child falls within section 300, it must determine at the disposition hearing whether the child should remain with her parent or be placed outside of her parent’s custody. (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992.) To warrant removal, the Department must prove by clear and convincing evidence that there is: (1) a substantial risk of harm to the child’s physical health or emotional well-being if returned home; and (2) a lack of reasonable means short of removal to protect the child’s safety. (§ 361, subd. (c)(1).)

The court has broad discretion to decide issues concerning the child’s custody. (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.) “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*T.V.*, *supra*,

217 Cal.App.4th at pp. 135–136.) The parent’s past conduct and willingness to accept responsibility for the issues leading to the child’s dependency is also relevant in determining whether removal is appropriate. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917; see also *In re A.F.* (2016) 3 Cal.App.5th 283, 293 [“ ‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ”].)

We review a disposition order removing a child from her parent’s custody for substantial evidence. (*In re D.C.*, *supra*, 243 Cal.App.4th at p. 55.) Because the Department must prove removal is warranted under a clear and convincing evidence standard of proof, we review the removal finding to determine “whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true.” (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1011 [courts must apply a heightened standard of review on appeal to account for the clear and convincing standard of proof]; see also *In re V.L.* (2020) 54 Cal.App.5th 147, 155 [concluding *O.B.* is controlling in dependency cases].)

The same evidence supporting the court’s finding that mother’s mental health issues place Marilyn at risk of harm under section 300, subdivisions (b) and (j), also supports the court’s removal order. As we discussed above, officials from DPSS, Tri-City, and East Valley Community Health were concerned that mother’s mental health issues prevented her from safely caring for Marilyn on her own. Mother often engaged in aggressive and threatening behavior toward the child, and she failed to adequately care for Marilyn’s hygiene, causing the child to suffer severe rashes on her legs. Mother also lacked stable

housing throughout the period leading up to the jurisdiction and disposition hearing. While mother has demonstrated a serious commitment to resolving her mental health issues that have contributed to her inappropriate behavior around Marilyn, the court reasonably could find, based on mother's aggressive and bizarre behavior leading up to the disposition hearing, that mother's mental health issues continued to pose a substantial risk of harm to Marilyn's safety.

### **DISPOSITION**

The juvenile court's jurisdiction findings and disposition order are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.